

Jones v. O'Keefe, No. 03-15080

SEP 25 2003

OTTO R. SKOPIL, JR., Senior Circuit Judge, dissenting:

CATHY A. CATTERSON
U.S. COURT OF APPEALS

I am unable to agree with my colleagues, and accordingly, I dissent. The record indicates that Jones settled his employment dispute with NASA and agreed “not to pursue any new complaints, grievances, or appeals with any administrative or judicial forum.” The district court noted that in exchange for Jones’s promise to drop his claims, NASA permitted Jones to return home without any further duties and continued to pay him until the end of his employment contract. After Jones received his last check, he instituted this pro se action, premised on his belief that he was not bound by the settlement agreement. I do not agree with the majority that there are disputed facts.

First, there is no dispute that Jones did not timely exhaust his administrative remedies. The district court correctly noted that Jones admitted he was aware of the alleged breach as early as July 2000. This admission is sufficient to permit the district court to conclude when Jones knew or should have known of an alleged breach, and accordingly, that he did not timely reinstate his administrative complaint.

Second, the district court correctly ruled that Jones ratified the settlement agreement by accepting the benefits of the agreement, namely, being released from work while continuing to receive pay. Moreover, Jones admitted that weeks after he signed the agreement, his condition improved and that he reread the contract and understood it. These are undisputed facts that, in my view, constitute ratification of the settlement agreement. Accordingly, I agree with the district court that Jones is bound by the terms and conditions of his settlement agreement.

I would affirm the judgment of the district court.